

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

NICOLE L. SMITH,

Plaintiff,

Case No: 18-007081-CB

Hon. Brian R. Sullivan

-vs-

THELMA L. FORREST,

Defendant.

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION**

At a session of said Court, held in the City
County Building, City of Detroit, County of
Wayne, State of Michigan, on
7/3/2019

PRESENT: HONORABLE BRIAN R. SULLIVAN

Plaintiff moved for reconsideration of the April 18, 2019 granting defendant's motion for summary disposition based on release and the time limits for seeking relief. Plaintiff states she can seek relief by an independent cause of action and MCR 2.612(C)(3) is not an impediment to that relief. The court denies plaintiff's motion for reconsideration.

A motion for reconsideration is predicated on MCR 2.119(F). That rule provides:

(3) Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues rule on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition

of the motion must result from the correction of the error.

In this instance the facilitation that resulted in the settlement agreement of the parties was concluded in December, 2013. That facilitation (of the proceeding under MCR 2.612) settled all claims from the sale of defendant's interest in the law firm to plaintiff. The parties had a dispute which involved the terms, or the completion of the terms, of the sale of defendant's interest in the firm to plaintiff. Plaintiff, a lawyer, was represented by a lawyer in that facilitation as was the defendant. A mediator resolved the disputes. A release of the claims and parties was reduced to writing and was part of the settlement agreement. Plaintiff now seeks relief from that settlement based on, among other reasons, fraud. The court concurs that an independent action is a legal vehicle available to plaintiff for relief in this instance and plaintiff is not restricted to a motion for relief from judgment.

MCR 2.612(C)(3) does provide an action for relief by an independent suit:

(3) This subrule does not limit the power of a court to entertain an independent action to relieve a party for a judgment, order, or proceeding; to grant relief to a defendant not actually personally notified as provided in subrule (B); or to set aside a judgment for Friend of the Court.

The rule does not provide for different time period within which the action can be brought. MCR 2.612. The time frame contained in MCR 2.612(C)(2) is "a reasonable time". MCR 2.612(C)(2). However, if the grounds of MCR 2.612(C)(1)(c) include fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party the time is limited to "within one year after ... other proceeding was entered or taken." MCR 2.612(C)(1)(a).

Plaintiff's claims against defendant for fraud, misrepresentation and misconduct in the facilitation are to be brought within the time frame in MCR 2.612. Plaintiff sued defendant for fraud, breach of fiduciary duty and violation of the rules of professional conduct in an independent action. All those counts are within MCR 2.612(C)(1)(c). MCR 2.612(C)(1)(c) is restricted by the time periods of MCR 2.612(C)(2), one year after proceeding was "entered or taken." MCR 2.612(C)(2). The legal vehicle advanced by plaintiff is acceptable. The time frame of MCR 2.612(C) still applies.

Moreover, the claims of breach of plaintiff are precluded by the release in the agreement. That release encompasses all the actions complained of in plaintiff's complaint.

Trost v Buckstop Lure Co., Inc., 249 Mich App 580 (2002) examines MCR 2.612(C) and the availability of a party to seek relief by independent suit. The case does not change any of the timeframes contained in the court rule. The independent action filed by *Trost* sought relief based on lack of jurisdiction, an express provision of the rule. The court found that an independent action could be brought and set forth criteria for it. This case is not jurisdiction but fraud, misrepresentation, etc. The time frame and release bar plaintiff's claims.

Plaintiff's motion for reconsideration does not meet her burden under MCR 2.119(F)

to show palpable error. Plaintiff's motion is denied; and

IT IS SO ORDERED.

/s/ Brian R. Sullivan 7/3/2019

BRIAN R. SULLIVAN
Circuit Court Judge

ISSUED: